IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.637 of 2002

Arun Sadashiv Kamble .. Appellant

versus

The State of Maharashtra .. Respondent

...

Mr.Bipin A. Jagoje with S.S. Butala for the appellant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 3rd December 2004.

ORAL JUDGEMENT:-

1. The appellant was convicted by the Sessions Court u/s.498 of the IPC and he was sentenced to undergo RI for three years with fine of Rs.2,000/- and in default of fine to undergo RI for a period of 15 months. He was also convicted for offence punishable u/s.306 of the IPC and sentenced to undergo RI for three years with fine of Rs.2,000/- and in default to

suffer RI for 15 months. Similarly, he was convicted u/s.323 and sentenced to undergo RI for six months with fine of Rs.500/- in default to suffer RI for 20 days and lastly he was convicted u/s.504 of the IPC and sentenced to undergo RI for six months with fine of Rs.500/- and in default to suffer RI for 20 days. The sentence was to run concurrently. The appellant has already undergone the said sentence and he was released after having completed his sentence on 18th June 2004. A letter to that effect is written by the Superintendent, Thane Central Jail to the Asstt. Govt. Pleader, High Court, Bombay. The said letter is taken on record.

2. The appellant is challenging the judgement and order passed by the trial Court dated 4th May 2002 in Sessions Case no.41 of 2002. By the said judgement and order, the appellant was convicted u/s.498A, 306, 323, 504 of the IPC and sentenced to suffer RI for three years on the first two counts and RI for six months of the last two counts. Further, a fine of Rs.2,000/- was imposed on the first two counts and in default to suffer RI for a period of 15 days and a fine of Rs.500/- on the last two counts and in default further RI for 20 days was imposed. The prosecution

case in brief is that the appellant and the deceased were residing at Sai Kunj Co-operative Housing Society. The prosecution case is that the accused used to harass the deceased everyday and used to assault her after consuming liquor. On the date of the incident when the deceased caught or in the morning at 6'O clock, her husband picked up quarrel with her and thereafter caught her hair and assaulted her. At about 7.00 a.m, she poured kerosene on herself and set herself on fire. One Hasmita who was her neighbour came near her house at about 7.00 a.m and heard that someone was weeping inside the house. She therefore, asked the accused to open the house and told him that if he did not open the door, she would raise shouts and call the other people from the building. The accused opened one of the windows and she witnessed that deceased Ranjana was burning as she had caught fire and that the accused was standing near her. She therefore, called a few people to break open the door. As the accused informed her that his wife had locked the door from inside, and he was not aware when she had kept the keys. The door was broken open by the neighbours and the child shifted in another room and they extinguished the fire. The accused on the pretext of making a telephone call to the police

went out of the house. However, he did not return back. Deceased Ranjana was taken to the hospital where her dying declaration was recorded. She died on the next day. The accused was thereafter arrested. The statement of witnesses were recorded. The charge-sheet was filed against the accused who pleaded not guilty to the charge.

3. The trial Court after perusing the evidence adduced by the prosecution convicted the accused.

4. The learned counsel appearing on behalf of the appellant has submitted that the prosecution have not proved that the accused had committed an offence punishable u/s.498A of the IPC. He submitted that there was no evidence to show that the accused had harassed or tortured the deceased and had driven her to a point where she had no other alternative but to commit suicide. He submitted that assuming that there was ill-treatment at the hands of the accused. Each and every ill-treatment by the husband could not be said to fall under the category of cruelty and harassment as envisaged u/s.498A of the IPC. He submitted that the only evidence that has been brought on record was that the accused used to consume alcohol

and abuse the deceased. He submitted that there was no demand of dowry made at any time. The learned counsel relied on a judgement of this Court reported in 1993 Cr.L.J. 3019 in the case of Ravindra Bidlan & ors. Vs. State of Maharashtra (Respondents). The learned counsel submitted that none of the witnesses which were examined have stated that the accused had treated her with such cruelty as would compel her to commit suicide. He also relied on the judgement of Orissa High Court reported in 1995 Cr.L.J. 174 in the case of Keshab Chandra Panda Vs. State in support of his submission. He submitted that the deceased had no reason to commit suicide as the quarrel had taken place at 6.00 a.m. and after one hour, she poured kerosene on herself. He submitted that she had sufficient time to cool down and it cannot be said that she was compelled to commit suicide after the incident which had taken place at 6.00 a.m.

5. The learned counsel further submitted that the provisions of section 306 of the IPC was not attracted and that there was no evidence to show that the accused had infact induced or had abated the deceased in committing suicide. He relied on judgement of the Apex Court in support of the said submission reported

in 2001 SCC (Cri) 847 in the case of Uka Ram Vs. State of Rajasthan. He submitted that the Apex Court had held that before relying on a dying declaration, Court should be satisfied that the deceased was in a fit state of mind to make a statement. He submitted that the dying declaration which was recorded did not have an endorsement of a Doctor that the deceased was in a fit state of mind to record the said statement. He further submitted that the Investigating Officer in his cross-examination had admitted that he was not in a position to depose as to whether the patient was in a position to sign or not and that he had not mentioned in the dying declaration where the thumb impression which was obtained on the statement was of the right hand or the left hand. He submitted that therefore, no reliance to be placed on such dying declaration. The learned counsel further relied on a judgement of the Supreme Court in the case of Ramesh Kumar Vs. State of Chhatisgarh reported in 2001(9) S.C 618.

6. The learned APP states vehemently opposed the submissions made by the learned counsel for the appellant. He submitted that the prosecution witnesses had specifically stated that the accused was

standing near the deceased and had not taken any steps to call either the neighbours or had tried to extinguish the fire. It was submitted that the witnesses had stated that the accused used to harass his wife after consuming alcohol and there were frequent quarrels between the husband and wife. He submitted that from the conduct of the accused clearly showed that he had not taken any steps to save his wife. He submitted that even assuming that the wife had locked the door from inside and therefore, he was unable to come out. Even then it was open for the accused to have called for help from his neighbours which was not done and on the contrary, the accused was a new spectator while his wife was burning in the passage which went to the bed-room. The learned APP submitted that the dying declaration of the deceased was corroborated by the other two witnesses. He submitted that the finding of the trial Court should be confirmed.

7. In the present case, the undisputed facts are that the accused had married this deceased about 8 years prior to the incident and there was one issue out of the said marriage. The accused was residing with his wife and child in Sai Kunj Apartment on the

second floor. The accused owned a rickshaw and used to ply the rickshaw during day time. According to the prosecution witnesses PW no.2 Hasmita on 29th December 2001 at about 7.00 a.m. she had gone to the house of the deceased Ranjana to inform her that she should fill up the water from the tap. However, she found that her door was closed. She therefore knocked the door when she heard that Ranjana was weeping and suspected that there was some quarrel between the accused and Ranjana so she asked the accused to open the door. The accused opened the window. At that time, she saw Ranjana was burning and accused was standing near her. She thereafter called people from the Society. She broke open the door and extinguished the fire by pouring water on the person of Ranjana. The accused left the house. According to her, the accused thereafter left the house under the pretext of informing the police. He subsequently came to know that she had committed suicide on account of the harassment and severe beating at the hands of the accused. PW no.3 Sanjay Palande has stated that on the date of the incident, he noticed that certain people had entered in the Court yard of the apartment and smoke was coming out of the house of the accused. He therefore, went to the second floor and saw Pathak,

Dnyaneshwar Kale, Hasmita Pathak and her mother had assembled there. He went towards the room of the accused. He saw that Ranjana was burning and the accused was standing near her. He and the other thereafter broke open the door.

8. None of these witnesses have deposed that he had seen or heard that the accused had harassed his wife or had assaulted her or had demanded dowry from her. In fact, it is not the prosecution case that the accused had ever demanded any dowry. Apart from the evidence of these two witnesses, the prosecution has relied on the dying declaration. It was recorded at the hospital. In the dying declaration, the deceased has stated that she was staying along with her husband and son was aged three years in the said Sai Kunj society since 2 years and that her father-in-law had purchased the said flat in her husbands name and had also purchased an autorickshaw for him. She has stated that six months before the date of incident, her husband had become addicted to drinking liquor and he used to come home after consuming liquor and used to pick up quarrel every now and then and used to abuse her and beat her. On the date of the incident when she got up in the morning at 6.00 a.m, her

husband started abusing her. She therefore, enquired with him as to why he was abusing her, her husband became angry at the reply given by her and he caught her hair and assaulted her. Thereafter at 7.00 a.m, she poured kerosene on herself as she was frustrated because of the constant abuse and assault by her husband and set herself on fire. She has stated that the front door of the flat was closed from inside. She has further stated that the people came and extinguished the fire. This dying declaration is recorded by Sub-Inspector of Police and the thumb impression of the deceased has been taken on the said dying declaration. The Investigating Officer however in his cross-examination was not in a position to point out as to whether the thumb impression was of the right hand or the left hand. Further, he has admitted that he had not made an endorsement to the effect that the patient was not in a position to sign and therefore, her thumb impression is being taken. Looking at the medical evidence which is brought on record, it can be seen that the deceased Ranjana had received 100% burns and therefore, it is difficult to accept the dying declaration particularly when the doctor has not endorsed the said dying declaration or has not stated whether the patient was in a fit

condition to record the dying declaration. The legal position in this respect is quite well settled and the Apex Court has held that ordinarily the dying declaration alone is sufficient to convict the accused without corroboration of other witnesses. However, the Apex Court has observed that while doing so, it must first be established by the prosecution that the dying declaration is properly recorded and no doubt is created regarding the veracity of the said statement. In the present case, the doctor has not endorsed whether the patient was mentally and physically fit to record the dying declaration. The Investigating Officer also has not stated or has not given an endorsement that the thump impression of the deceased was being taken because she was unable to sign. No serious efforts have been taken to bring the Special Executive Magistrate so that the dying declaration could be recorded in his presence. In view of this, it is difficult to rely on the said dying declaration.

9. The provisions of section 498A are not attracted in the present case as admittedly there was no demand of dowry made by the accused. Similarly, there is no evidence brought on record to indicate that there was harassment of the wife or that because

of the harassment she had no other alternative but to commit suicide. Merely because there was ill-treatment of the wife, it cannot be said that the ill-treatment was such which would lead her to take the extreme step of taking her life. Even according to her own dying declaration if it is to be accepted, the harassment has started six months before the incident. The other two witnesses PW no.2 and 3 have deposed about the incident in question and have not stated that the accused used to harass or beat his wife. Thus, the prosecution has not adduced any evidence to prove either commission of offence u/s.498A or abatement of suicide u/s.306 of the IPC.

10. Another factor which can be taken into consideration is that the prosecution has not examined the parents of the deceased Ranjana or any of her relatives who would have been in an better position to state about the harassment or ill-treatment of the accused. The Investigating Officer has sought to produce two letters which were written by the deceased Ranjana to her parents. However, these two letters have not been proved. It was open for the prosecution to have proved these letters by examining the parents or any other relatives of the deceased. Under these

circumstances, it is difficult to accept the prosecution case that the accused had committed an offence u/s.498A and 306 of the IPC.

11. Another peculiar fact which has come on record during the cross-examination of the Investigating Officer and also which can be inferred from the spot panchnama that deceased Ranjana had converted herself and had embraced Islam. The Investigating Officer in his cross-examination has admitted that during the course of investigation, he had come to know that the deceased had recently embraced Islam. The accused in his statement which is recorded u/s.313 has stated that there were quarrels between the husband and wife since she had embraced Islamic religion and that she had accidently burnt herself. In the spot panchnama also, the panchas had noticed that there were photographs of Islamic scriptures and similar other objects. From this fact which is brought on record, it appears that the quarrel between husband and wife may have been on account of conversion of the wife into Islam. Thus, in my view, prosecution has failed to establish beyond reasonable doubt that the accused had commit the offence u/s.498A and 306 of the IPC.

12. The trial Court appears to have been influenced by the evidence of PW nos.2 and 3 wherein these two witnesses have stated that while the deceased was burning, accused was standing near her. The trial Court has recorded a finding that the appellant was therefore a mute spectator and had not taken any steps to extinguish the fire. In my view that by itself cannot be evidence to show that the accused had committed an offence either under 498A or 306 of the IPC. Thus, the judgement and order passed by the trial Court is quashed and set aside.

13. The accused is acquitted of the offence with which he is charged. The accused be released from jail forthwith unless he is already otherwise released from jail.

14. The learned APP appearing for the State has produced a letter written by Superintendent, Thane Central Jail dated 2nd December 2004 in which it is mentioned that the appellant is already released on 18th June 2004 after having completed his sentence.

15. Appeal accordingly is allowed.

V.M. KANADE, J